IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 171 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NUTAN MILLS LTD.

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 15/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following questions are referred to us for our opinion in respect of assessment year 1980-81 :-

1. Whether the assessee is entitled to allowance of excise claimed liability of Rs.6,29,332/- for assessment year 1980-81 when the excise authorities had only issued show cause notices and the claim was disputed by the assessee ?

2. Whether when no determination was made in respect of the excise liability and demand was raised by show cause notices which were disputed, the claim of allowance made by the assessee was justified ?

2. In the course of assessment proceedings for assessment year 1980-81, the assessee Company, a textile manufacturing unit, claimed deduction of Rs.6,29,332/- as excise duty liability on the basis of the show cause notices dated 6.5.1979, 12.12.1979, 25.9.1979 and 8.3.1980 issued by the Central Excise authorities. The ITO disallowed the claim on the ground that the said liability did not accrue or arise during the accounting period under consideration i.e. the calendar year 1979. The assessee's contention that the notice was in respect of the duty payable on sized yarn manufactured during the accounting year 1979 and, therefore, the liability accrued in the accounting year 1979 was not accepted by the ITO. The ITO also disallowed the said claim on the ground that the assessee had not accepted the liability and the same was disputed. In appeal, the CIT (Appeals) accepted the claim of the assessee and allowed the deduction on the basis of the decision of the Supreme Court in Kedarnath Jute Mfg. Co. (82 ITR 363). The Tribunal confirmed the decision of the CIT (Appeals). Hence, at the instance of the revenue, the present reference.

3. The controversy raised in this case is squarely covered by our decision rendered in Income-tax Reference No. 121 of 1989. After considering the decision of the Apex Court in CIT vs. Bharat Carbon and Ribbon Manufacturing Co. P. Ltd., (1999) 239 ITR 505 wherein the case of Kedarnath Jute Mfg. Co. (Supra) was also considered by the Supreme Court, we have held that the liability to pay excise duty does not accrue merely upon issuance of show cause notices under sub-rule (1) of Rule 10 of the Central Excise Rules which was in force till 16.11.1980 and that the liability to pay excise duty

accrues only upon adjudication by the excise authorities and issuance of the order in original/demand notice under sub-rule (2) of Rule 10 thereof.

4. As far as the facts of this case are concerned, Mr Naik, learned counsel for the revenue states that the notices issued by the excise authorities in the year 1979-1980 were discharged by the Excise Department in view of the decision of the Supreme Court in M/s J.K. Cotton Spg. & Wvg. Mills Ltd. vs. Union of India holding that the textile mills were not liable to pay any excise duty on the yarn after it is sized for the purpose of weaving the same into fabrics and no distinction can be made between unsized yarn and sized yarn, for the unsized yarn when converted into sized yarn does not lose its character as yarn. In view of the aforesaid decision of the Supreme Court in favour of the assessee, the excise authorities discharged the show cause notices referred to hereinabove.

5. In view of the above, it is obvious that the liability to pay excise duty had never accrued in the first place and, therefore, the assessee was not entitled to claim any deduction on this ground.

6. In view of the above discussion, question Nos. 1 and 2 are answered in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-